

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No. IT-04-75-PT
Date: 9 October 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 9 October 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF EVIDENCE
OF GH-067, GH-099, AND GH-139 PURSUANT TO RULE 92 *ter***

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “Prosecution Motion for Admission of Evidence of GH-067 Pursuant to Rule 92 *ter*”, filed publicly with a confidential annex on 18 September 2012 (“First Motion”), and “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-099 and GH-139)”, filed confidentially with a confidential annex on 21 September 2012 (“Second Motion”) (collectively referred to as “Motion”). The Defence publicly filed its “Response to Prosecution Motion for Admission of Evidence of GH-067 Pursuant to Rule 92 *ter*” on 2 October 2012 (“First Response”). The Defence confidentially filed its “Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-099 and GH-139)” on 5 October 2012 (“Second Response”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-067, GH-099, and GH-139, pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), arguing that the evidence is probative, relevant, and reliable and meets the requirements for admission under that Rule. The Prosecution submits that admitting the evidence in this manner will enable it to present its case-in-chief in an efficient and expeditious manner, without compromising the fairness of the proceedings.¹ In relation to GH-067, the Prosecution requests the admission of three associated exhibits that, in its view, form an integral part of the tendered Rule 92 *ter* statement.²

3. The Defence does not oppose the Motion in respect of GH-067’s statement.³ However, the Defence objects to the admission of the three documents discussed in the statement on the basis that the witness has no direct knowledge of the events at issue in the documents.⁴

4. The Defence opposes the admission into evidence of the four paragraphs of GH-099’s statement that pertain directly to the witness’s interactions with Hadžić. It is argued that those portions should be led *viva voce* before the Trial Chamber, “rather than in the formulation as written by the Prosecution’s investigator more than eleven years ago [...] behind closed doors.”⁵

¹ First Motion, paras 1, 4; Second Motion, paras 1, 5, 8.

² First Motion, para. 6.

³ First Response, para. 1.

⁴ First Response, para. 2.

⁵ Second Response, paras 1-5.

5. The Defence does not oppose admission into evidence of the GH-139's statement.⁶

B. Applicable Law

6. Rule 92 *ter*—entitled “Other Admission of Written Statements and Transcripts”—provides as follows:

- (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:
 - (i) the witness is present in court;
 - (ii) the witness is available for cross-examination and any questioning by the Judges; and
 - (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.
- (B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

The main objective of Rule 92 *ter* is to ensure an effective and expeditious trial, while simultaneously ensuring and respecting the rights of the accused.⁷

7. Although Rule 92 *ter* does not *per se* govern the admission of exhibits, the jurisprudence of the Tribunal permits the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁸ In order to satisfy this requirement, the witness's testimony must discuss the document, and the document must be one without which the witness's testimony would become incomprehensible or of lesser probative value.⁹

⁶ Second Response, paras 6-7. The Trial Chamber considers that the relief requested by the Defence in paragraph 6 of the Second Response is a matter that should be dealt with between the parties in the first instance. If the Defence is not satisfied by the outcome, it can request any necessary and appropriate relief from the Chamber in a motion, rather than in a response to a motion of the Prosecution.

⁷ *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92 *ter* (ST012 and ST019), 29 September 2009 (confidential) (“*Stanišić and Župljanin* Decision”), para. 18; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 25 June 2007, p. 2; *Prosecutor v. Delić*, Case No. IT-04-83-T, Decision on Prosecution Motion to Admit Written Witness Statements under Rule 92 *ter*, 27 September 2007, para. 10.

⁸ *Stanišić and Župljanin* Decision, para. 18; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, 9 July 2008 (“*Lukić and Lukić* Decision”), para. 15; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution's Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D) of the Rules, 23 January 2004, p. 3; *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motion for Admission of Evidence Pursuant to Rule 92 *ter*, 10 February 2009 (“*Đorđević* Decision”), para. 5.

⁹ *Stanišić and Župljanin* Decision, para. 18; *Lukić and Lukić* Decision, para. 15; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution's Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 May 2008, para. 19; *Prosecutor v. Haraqija and*

8. The evidence sought to be admitted pursuant to Rule 92 *ter*, whether a written statement or a transcript of oral testimony, must fulfil the general requirements of admissibility of Rule 89(C): the proposed evidence must be relevant and have probative value.¹⁰

C. Discussion

9. GH-067's proposed Rule 92 *ter* statement contains information about the command structure of a militia in the "Serbian Autonomous District Slavonia, Baranja and Western Srem"; the alleged detention and interrogation of non-Serbs from the village where GH-067 worked and nearby villages; and militiamen and armed groups operating in the area.¹¹ The tendered exhibits are discussed in the Rule 92 *ter* statement; specifically, the witness states that he knew people who were listed in the documents as having been taken from the Dalj Police Station in 1991. The Trial Chamber finds that the tendered statement and associated exhibits are relevant, have probative value, and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*. The Trial Chamber is of the view that the associated documents may not need to be tendered under seal and therefore requests the Prosecution, when tendering the evidence in court, to reconsider whether they need to be admitted under seal.

10. GH-099's proposed Rule 92 *ter* statement contains information about the Erdut Training Centre in Croatia and the alleged arrest of non-Serb persons by the Dalj Militia and Arkan's men. In respect of the Defence's objections to portions of the proposed Rule 92 *ter* statement, the Trial Chamber observes that the statement contains formal indicia of reliability because the witness signed the English version after it was orally translated into Bosnian/Croatian/Serbian and the statement contains an attestation that the statement was read back to the witness and a certificate that the translation was done by a Registry-approved interpreter. The Trial Chamber finds that the tendered statement is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*. The witness will be present in court to attest to the accuracy of the statement, and the Defence will have an opportunity to address its concerns in cross-examination.

11. GH-139's proposed Rule 92 *ter* statement contains information about the alleged attack by the JNA and TO on the Police Station in Dalj; the alleged distribution of weapons among Serb villagers by the JNA; the formation of a Serb crisis committee; the alleged arrest and detention of 30 men in the Dalj Militia building; and the alleged killing of some of the detainees by Arkan's

Morina, Case No. IT-04-84-R77.4, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* and/or 92 *ter*, 2 September 2008 ("*Haraqija and Morina* Decision"), para. 12; *Đorđević* Decision, para. 5.

¹⁰ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

¹¹ Motion, para. 4.

men. The Trial Chamber finds that the tendered statement is relevant, has probative value, and is appropriate for admission pursuant to Rules 89(C) and 92 *ter*.


D. Disposition

12. Accordingly, the Trial Chamber, pursuant to Rules 54, 89(C), and 92 *ter* of the Rules, hereby

- (a) **DECIDES** that the evidence of GH-067, GH-099, and GH-139 is appropriate for admission into evidence; and
- (b) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence, if the conditions set forth in Rule 92 *ter* have been fulfilled when the witness is present in court.

Done in English and French, the English text being authoritative.

Done this ninth day of October 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]